DOCUMENT RESUME

ED 168 192 EA 011 470

AUTHOR Drake, Jackson M.
TITLE Landmark Court Cases Affecting School Governance. Volume II. Resource Guide.
INSTITUTION Arizona State Univ., Tempe. Bureau of Educational Research and Services.
PUB DATE Feb 79
NOTE 68p.; Prepared for Arizona educators through Arizona Educational Information System

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Bilingual Education; Civil Liberties; Corporal Punishment; *Court Cases; Educational Accountability; Educational Administration; Elementary Secondary Education; Equal Education; Reverse Discrimination; *School Law; School Segregation; Student Rights; *Supreme Court Litigation; Teachers

ABSTRACT

During the late sixties and early seventies, school-related court decisions increased. The purpose of this publication is to present significant information for school board members and other interested people concerning selected landmark decisions in which the United States Supreme Court has rendered opinions on school issues. Many of these cases have established legal principles which may serve as guidelines for other potential litigation. For each case, the publication presents the citation, the facts of the case, the holding, and the basis for the decision. The cases selected concern segregation, aid to nonpublic schools, students' rights, corporal punishment, separation of church and state, liability, educational malpractice, bilingual education, equal educational opportunities, teachers' rights, school salaries, emotionally handicapped children's rights, maternity leave policies, and reverse discrimination. (Author/JM)

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LANDMARK COURT CASES AFFECTING SCHOOL GOVERNANCE

February 1979

BUREAU OF EDUCATIONAL RESEARCH AND SERVICES
COLLEGE OF EDUCATION
ARIZONA STATE UNIVERSITY

RESOURCE GUIDE

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LANDMARK COURT CASES

AFFECTING SCHOOL GOVERNANCE

Volume II

By

Jackson M. Drake

February 1979

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RESOURCE GUIDE

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ACKNOWLEDGEMENTS

The reviewers for the cases included in this report were Mr. Dale Hatch, Deputy County Attorney, Maricopa County, State of Arizona; Professor Alan A. Matheson, Dean, College of Law, Arizona State University, Professor Emeritus Robert Ashe, College of Education, Arizona State University; and Ms. LouElla Kleinz, Executive Director, Arizona Board Association.

Appreciation is also directed to Mr. Perry A. Zirkel, Editor of A Digest of Supreme Court Decisions Affecting Education published by Phi Delta Kappa 1978 and Mr. Edward C. Bolmeier, Emeritus Professor of Education, Duke University and his review of Landmark Supreme Court Decisions on Public School Issues, the Michie Company 1973.

FOREWORD

The local school board is one of the diminishing strongholds of democracy in a rapidly changing world. It is one of the basic local units in the American form of government which must continue to function with increasing effectiveness if democratic control of our society is to be preserved.

The Board of Trustees/Education is the vehicle through which the will of the people is translated into an educational program in their local school. Likewise, nationwide coordination of American education must come primarily through our Boards of Trustees/Education, working toward common ideals, serving common needs. It must also come through common educational laws and regulations of our state and federal government which constitute the "ground rules" by which the board functions.

As our society becomes more complex and the scope of education broadens, the "ground rules" become more complicated. The board must constantly guard against allowing them to handicap, rather than facilitate its primary function of determining educational policy.

More than ever before, local school boards, to fully meet their responsibility and to use their authority properly, will require a reasonable knowledge of their powers and duties.

Quoting from remarks of Supreme Court Mr. Justice White:

> A school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activity of students, must be held to a standard conduct based not only on permissible intentions but also on knowledge of his charges. Such a standard neither imposes an unfair burden upon a person assuming a responsible public office requiring a high degree of intelligence and judgment for the proper fulfillment of its duties, nor an unwarranted burden in light of the value which civil rights have in our legal system; any lesser standard would deny most of the promise.

The words of Mr. Justice White carry serious and far reaching consequences for everyone involved in education today and in the future,

Ms. LouElla Kleinz
Executive Director
Arizona School Boards Association

PREFACE

School Board members and school administrators should be thoroughly enlightened as to the judicial system of our Federal Government. This is especially true with respect to the purposes and functioning of the United States Supreme Court on school matters.

The influence of court decisions on the operation of local school districts is an established fact. During the last decade, the number of court cases and their impact upon the daily operation of schools have sharply increased. The administration of schools has become more complicated and it is imperative that administrators and school board members be well informed about significant court decisions.

This publication does not purport to provide legal advice but only to present some basic information concerning selected landmark cases which are considered important to school boards and school administrators.

The purpose of this Resource Guide is to present in concise form, significant information concerning the landmark decisions in which the U.S. Supreme Court has rendered decisions on school issues. Not every Supreme Court decision on school issues has been included in this report. The selection includes only those which have caused the greatest public concern and controversy. Many of them have established legal principles which may serve as guidelines for other potential litigation on forthcoming questions in which constitutionality is involved.

This Resource Guide will have achieved its purpose if it alerts board members and school administrators to these critical decisions and their impact upon the schools.

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INTRODUCTION

The Constitution of the United States provides for the establishment and functioning of three branches of the federal government. Article I provides for the legislative branch (Congress); Article II refers to the executive branch; and Article III deals with the judicial branch.

Each of these three branches of government assumes authority and performs functions which have significant bearing on the public schools. However, in recent years, much more public attention has been focused on the judicial branch of the federal government than on either of the other two branches in matters concerning local school districts. Criticism has been launched against this branch of government because of the manner and degree in which it has assumed its constitutional obligations for the protection of rights and liberties in school situations.

The United States Supreme Court has, with few exceptions, extended broad power to the States under general constitutional construction upholding the State interest in establishing free public education for elementary and secondary school-age students.

During the late sixties and early seventies the U.S. Supreme Court began a series of re-examinations of the Constitutional issues related to the organization and finance of public schools in this country. During this period of time, school adminstrators and school board members have witnessed an upsurge in the number of school-related statutory enactments, federal legislation, and court decisions. The local enactments and interpretations have had a far-ranging influence on the lives of all who are associated with public education.

An understanding of these legislative enactments and judicial interpretations within the framework of legal principles is basic to sound operational practice and to effective decision making in classrooms, administrative circles, and board meetings of local school districts.

Courts take the view that because the State legislature has delegated to school boards the power to exercise judgment and discretion in matters affecting the schools, they will not interfere unless there is evidence that the board has exercised its power in an unreasonable, arbitrary, capricious and unlawful manner.

A court generally does not substitute its judgment for that of the school board on any question which the board is authorized by law to determine. The courts are not inclined to pass judgment upon the wisdom of rules and regulations enacted by school boards nor will they interfere with a board's determination as to whether a rule has been violated unless there is some evidence that the board has acted with malice or in bad faith.

There was a time when serving as a member of a school board was less complex and demanding. This same statement can be applied to almost every state or public office. Certainly no school board today is "an island entire of itself". Complex and varied problems once considered indigenous to inner-city areas now spread across urban boundaries into suburbs and rural school districts. Smaller school districts have their own unique and particular burdens.

Today, there are new expectations of members of school boards that serve local communities that require extensive community involvement in the local public educational decision-making process. The critical importance of public schools in our society, and the acceptance of individual school board members of a more personal stake in the governance of schools, will enable various segments of the community to work toward common ideals and serve common needs.

To analyze every United States Supreme Court decision affecting the public schools is beyond the scope of the writer's undertaking. Only three such decisions were rendered by the Supreme Court during the century, 1789-1888, and twenty two during the period 1889-1948. During the past several decades there has been an accelerated increase of the number of decisions relating to public school operation.

The scope of this publication is therefore limited to a selection and treatment of the most significant school cases decided by the Supreme Court. The decisions of the cases so selected may be regarded as landmark decisions. Admittedly, the selection of "landmark decisions" is rather arbitrary. The very fact that a case has been ruled upon by the highest court in the land makes the decision a "landmark decision."

The purpose of this Resource Guide is to present, in concise form, significant information concerning selected landmark decisions in which the United States Supreme Court has rendered decisions on school issues.

In order to produce the most relevant case information in a simple and uniform fashion, the procedure for presentation of each case is to indicate:

(1) the citation of the case,

(2) the facts of the case,

(3) the holding, and

(4) the basis for the decision.

The citations follow the style of the Harvard Law Review Association, A Uniform System of Citation, 12th ed.(1976). For the typical case, the form of the citation is summarized below:

Brown	v.	Board of Ed.	347	S. Ct.	483	(1954)
(Plaintiff)		(Defendant)	(Vol.#)	(Supreme Ct. Rpts)	(Page #)	(Yr. of Decision)

The review of selected court cases provides evidence of the courts' influence on education. It is not the intent of these reviews to provide legal advice - they are informational only. The school district's attorney (A.R.S. 11-352 or 15-438) is the person to whom such questions should be directed. Each reader, whether a board member or other interested person may wish to ponder these decisions in the light of the problems facing the school districts of Arizona.

Selected Federal Constitutional Provisions that have been important to education related cases.

Article I, Section 8:	
General Welfare Clause	"The Congress shall have the Power To...provide for ...,general Welfare of the United Sates...,"
Commerce Clause	"To regulate Commerce,.. among the several states ...."
Article I, Section 10:	
Impairment of Contacts Clause	"No State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts ...."
Article III: Section 2	"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties (etc.)...to Controversies...between Citizens of different States,(etc)...."
Amendment I:	
Establishment and Free Excercise Clauses	"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. ."
Freedom of Expression Clause	"Or abridging the freedom of speech...or of the press. ..."
Freedom of Assembly Clause	"Or the right of the people peaceably to assemble.... and to petition the Government for redress of grievances...."
Amendment V:	
Due Process Clause (Congress)	"No person shall be...deprived of life, liberty, or property without due process of law...."
Self-Incrimination Clause	"nor shall be compelled in any criminal case to be a witness against himself..."
Amendment VIII:	"(N) or cruel and unusual punishment inflicted...."

Selected Federal Constitutional Provisions -- (Continued)

Amendment X:	"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States...."
Amendment XI:	"The Judicial power of the United States shall not extend to any suit in law or equity.. .. against one of the United States by Citizens of another State...."
Amendment XIII:	"Neither slavery nor involuntary servitude, except as a punishment for crime...shall exist within the United States...."
Amendment XIV:	
Due Process Clause	"(N) or shall any State deprive any person of life, liberty, or property, without due process of law...."
Equal Protection Clause	"nor deny to any person within its jurisdiction the equal protection of the laws...."

SEGREGATION OF THE RACES IN THE PUBLIC SCHOOLS

BROWN v. BOARD OF EDUCATION (KANSAS)
BROWN I
74 S. Ct. 686 (1954)

FACTS: The Kansas Statutes permitted, but did not require, cities of more than 15,000 population to maintain separate school facilities for black and white students. The parents of black children of elementary school age residing in Topeka, Kansas, brought action in the United States District Court for the District of Kansas to enjoin enforcement of this statute.

The issue of this case, as expressed by the court, was whether "segregation of white and black children in the public schools of a state solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to black children the equal protection of the laws guaranteed by the Fourteenth Amendment--even though the physical facilities and other 'tangible' factors of white and black schools may be equal."

HOLDING: One of the most spectacular and significant judicial decisions of the century was handed down, without dissent, by the United States Supreme Court. In essence, the Court held that segregation of white and black children in the public schools solely on the basis of race, denied the black children the equal protection of the laws guaranteed by the Fourteenth Amendment and was therefore unconstitutional. The court, in granting relief, set aside the "separate but equal" doctrine announced by the U.S. Supreme Court in Plessy v. Ferguson in 1896.

BASIS: The Fourteenth Amendment guarantees that students receive equal protection of the laws. The state's segregation of children in public schools solely on the basis of race deprives minority children of equal educational opportunities, even though the physical facilities and other tangible factors may be equal.

Despite the diversity of opinion throughout the nation regarding the court's decision in Brown, it is significant that the decision was unanimous. In contrast to the split decisions pertaining to the issues of religious influences in the

public schools and the academic freedom of teachers, there was not a single dissent to the opinion delivered by Chief Justice Warren.

A subsequent case (Brown v. Board of Education) Brown II, 75 S. Ct. 753 (1955) was initiated for the purpose of establishing guidelines for implementing the Brown I decision of 1954.

SEGREGATION OF THE RACES IN THE PUBLIC SCHOOLS

BROWN v. BOARD OF EDUCATION (KANSAS)
BROWN II
75 S. Ct. 753 (1955)

FACTS: Brown I (supra) declared the fundamental principle that racial discrimination in public education is unconstitutional. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. Because of the complexities involved in moving from a dual, segregated system to a unitary system of public education, the Court here considered the suggestions of the parties involved, and of state and federal attorneys general. The Court then returned the cases to the local federal courts, from which they had come, for action in accord with the following guidelines and with the Brown I decision.

HOLDING: Local school authorities have the primary responsibility for implementing the Brown I decision. The function of the federal courts is to decide whether a school board is complying in good faith and to reconcile the public interest in orderly and effective transition to constitutional school systems with the constitutional requirements themselves. However, the principle of equal educational opportunity cannot yield simply because of public disagreement. A "prompt and reasonable start" toward full compliance must be made and compliance must proceed "with all deliberate speed."

BASIS: The Fourteenth Amendment, as interpreted in Brown I, guarantees students equal protection of the laws and requires that racially segregated public schools be declared unconstitutional.

This case was initiated for the purpose of implementing the Brown I decision of 1954. Because of the nationwide significance of the decision, the U.S. Supreme Court invited the Attorney General of the United States and the Attorney General of all states requiring or permitting racial discrimination in public education to present their views for resolving issues that lay ahead. After hearing a number of briefs,

The Court arrived at a decision and remanded the cases to district courts:

> to take such proceedings and enter such orders and decrees consistent with their opinion as are necessary and proper to admit to public schools on a nondiscriminatory basis with all deliberate speed the parties to these cases.

ASSISTANCE TO NON-PUBLIC SCHOOLS

WOLMAN v. WALTER
433 U. S. 229 (1977)

FACTS: A recent Ohio law providing state aid to non-public elementary and secondary schools was challenged by a group of citizens and taxpayers. Most of the schools standing to benefit from the program are sectarian institutions.

The statute authorizes the provisions of the following:

(1) secular texts,

(2) standarized testing and diagnostic services,

(3) therapeutic and remedial services administered by public school personnel at religiously neutral locations.

(4) instructional materials and equipment comparable to those supplied to public schools, and

(5) transportation and other services for field trips.

HOLDING: A state may constitutionally supply sectarian private schools with the following:

(1) secular texts which are approved by public school authorities and which are loaned to private school students or their parents.

(2) standarized tests and scorings services such as are used in the public schools, provided the nonpublic school personnel are not involved in test drafting or scoring and nonpublic schools are not reimbursed for costs of test administration.

(3) diagnostic speech, hearing and psychological services performed in the nonpublic schools by public school personnel, and

(4) therapeutic guidance and remedial services staffed by public school personnel and performed in religiously neutral territory, i.e., not on private school grounds. A state may not constitutionally provide nonpublic schools with instructional equipment and materials or with field trip transportation and services.

BASIS: A statute, under the establishment clause of the First Amendment, must have a secular legislative purpose, a principal effect that is religiously neutral, and must not foster excessive government entanglement with religion. By this standard, the state provision of secular tests, standardized texts, diagnostic and therapeutic or remedial services as described above is constitutional. The loan of instructional materials to the private schools rather than to individual students is excessive state aid to the advancement of religion and is unconstitutional. The state support of nonpublic school field trips is a benefit to sectarian education rather than to individual students and is therefore unconstitutional state aid to sectarian education. Also, the state surveillance of field trips which would result in unconstitutional church-state entanglement.

STUDENTS HAVE CONSTITUTIONAL RIGHTS TOO!

IN RE: GAULT
387 U.S. 1 (1967)

FACTS: The case originated in Arizona in 1964. The U.S. Supreme Court decided the case in 1967. Though not generally considered a school case, it has implications for educators. Gault involved a juvenile proceeding against a fifteen year old Gila County youth for delinquent behavior. Gerald Gault was taken into custody by the Gila County Sheriff for participating in an obscene telephone call. The proceeding that followed lacked ordinary procedural safeguards. There was no advance notice of charges; evidence was largely hearsay; Gerald was not advised of his right to remain silent, was not given the right to counsel or permitted to question or meet his accuser. He was committed to reform school for six years. An adult convicted of the same offense would have received a fine of from five to fifty dollars and jailed for not more than two months. There was no provision for appeal of juvenile court decisions to a higher court. In this case, the boy's parents challenged the validity of the state juvenile court statute which allowed a child to be incarcerated, yet denied him basic constitutional rights.

HOLDING: The U.S. Supreme Court ruled an accused youth is entitled to counsel, to cross examination and confrontation of accusers, and to remain silent after appropriate warning, and that in a juvenile proceeding these minimum constitutional rights must be maintained. In view of the severity of penalties imposed and the defects of the process followed, the U. S. Supreme Court set forth certain elements of due process for such situations:

> 1. Due process of the law requires... notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' rights to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet...

2. It was concluded that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed. the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, then counsel will be appointed to represent the child.

3. It was concluded that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults...

4. It was held that, absent a valid confession, a determination of delinquency and an order to commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements...

BASIS: The Fifth Amendment creates a right against self-incrimination.

"....Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

The Supreme Court of the United States delivered its opinion In the Matter of the Application of of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor. Without doubt this case indeliby marks the land of the juvenile court world. Although the full implications of the decision may not become apparent for some time, the opinion

(1) reaffirms the basic validity of a separate court forum for juveniles accused of delinquent behavior, and

(2) extends to juveniles certain constitutional protections thereby redesigning the adjudicatory hearing heretofore used in most jurisdictions.

The decision will require extensive revision in procedures and practices in the majority of courts; accelerated study and inservice training by court and law enforcement personnel; and a far greater commitment of public funds and attention in juvenile justice.

DUE PROCESS REQUIRED FOR SUSPENSIONS

GOSS v. LOPEZ
95 S. Ct. 729 (1975)

FACTS: The Ohio public school law empowered a principal to suspend students for up to ten days without giving them notice of the reasons for such action or a hearing that would afford them an opportunity to explain their view of the incident in question. Nine high school students, who were suspended for ten days without a hearing of any kind, challenged the constitutionality of the statutes involved. They sought court orders restraining the school officials from issuing future suspensions and requiring the school officials to remove references to the past suspensions from their school records.

HOLDING: Suspensions ordered and statutes permitting students to be suspended without notice and hearing are unconstitutional. Students who are suspended for up to ten days must be accorded the following before suspension:

(1) oral or written notice of the charges;

(2) an explanation of the evidence if the student denies the charges; and

(3) some kind of hearing that includes an opportunity to present the student's view of the incident.

There need be no delay in the time between the notice and the subsequent hearing, and the constitutional requirements may be met by an informal discussion which includes the necessary elements. Unless the student's continued presence in the school poses a threat to persons, property, or the academic program, the required procedures shall precede suspension. If it is necessary that the student be removed immediately, the notice and hearing must follow within a reasonable time. Complicated situations and suspensions for longer periods of time may require more formal procedures which could include legal counsel and the right to present and confront witnesses.

BASIS: U.S. Constitution, The Fourteenth Amendment. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The procedure applicable to short-term suspensions are required by the Fourteenth Amendment which prohibits the states from impairing a person's life, liberty, or property interest without due process of law.

(1) The students have a "property" interest in public education. Although there is no constitutional provisions quaranteeing free public education, the fact that the state has undertaken to provide its students with such an education creates a constitutionally protected interest. The state cannot deny compulsory education to some because of misconduct without adherence to the minimum procedures required by due process.

(2) The students have a "liberty" interest in their reputations. Due process is required "where a person's good name is at stake. . . because of what the government is doing to him." The court found that suspension could damage a student's reputation with teachers and other students and interfere with future educational and employment opportunities. Even if the damage to students' educational and reputational interest is temporary and slight, due process protections will still be required. The temporary nature of the impairment will determine "what process is due," but will not obviate the need for some procedural protection unless the impairment of right is negligible.

The court position is clear. A student's legitimate right to public education is a property interest that is protected by the Due Process Clause and cannot be taken away for misconduct without observing minimum due process.

NOMINAL DAMAGES FOR VIOLATION OF DUE PROCESS

CAREY v. PIPHUS
98 S. Ct. 1042 (1978)

FACTS: The United States Supreme Court ruled that a student could be awarded nominal damages for violation of his/her due process rights. The decision resulted from actions taken by school boards in two different situations: One in which a student had been suspended (for smoking what appeared to the principal to be marijuana cigarette) following a meeting of the principal, the student, parent and the student's counsel to explain the reason for the twenty-day suspension, but at which time the student was not permitted to explain his behavior; and the other case in which a student was given a twenty-day suspension for wearing an earring after his mother refused to force him to remove it when the principal notified her the wearing of such was a violation of school rules.

HOLDING: The plaintiffs argued that they were eligible for compensatory damages, but the Court found that in the absence of proof of injury only nominal damages could be awarded. The court ruled that mental and emotional distress could not be presumed to occur, because the likelihood of the occurence of such injury is not great enough to justify the award of compensatory damages, absent of showing that the deprivation of Constitutional rights actually caused such damage.

BASIS: The case established the rights of students to collect damages for disciplinary action taken by school officials and allowed nominal damages for a violation of a student's "due process rights" as provided for in the Fourteenth Amendment without requiring a showing of actual harm.

CORPORAL PUNISHMENT

BAKER v. OWEN
96 S. Ct. 210 (1975)

FACTS: Corporal punishment is generally conceived as intentional infliction of pain subsequent to misconduct on the part of a student for the purpose of deterring future misconduct. It came into use with the beginning of education--long before public education was prevalent. It is based upon the common law, with the concept that the teacher stands in loco parentis in disciplinary matters.

This case involved a reportedly mild paddling administered to a sixth-grade student. The suit, instituted by Mrs. Baker, the boy's mother, claimed illegality of the corporal punishment over parental objection.

Mrs. Baker argued that the North Carolina Statute which empowers school officials to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and to maintain order" is unconstitutional insofar as it allows corporal punishment over parental objection.

HOLDING: The court was not convinced by Mrs. Baker's arguement as evidenced by its following statement:

> It should be clear beyond preadventure, indeed self-evident, that to fulfill its assumed duty of providing an education to all who want it, a state must maintain order within its schools...So long as the force is reasonable - and that is all that the statute here allows - school officials are free to employ corporal punishment for disciplinary purposes until in the exercise of their own professional judgment, or in response to concerted pressure from opposing parents, they decide that its harm outweighs its utility.

The court rejected the plaintiff's argument that the constitutional concept of family privacy barred school officials from spanking children over parental objection. In addition the court

ruled that the Fourteenth Amendment requires that corporal punishment be accomplished with procedural due process. The court said:

1. The student must have been specifically warned what misbehavior would be punished corporally.

2. Other means of modifying behavior must be tried first.

3. Force must be reasonable and punishment must be administered in the presence of a second school official who must be informed beforehand and in the student's presence of reason for punishment.

4. On request, the parent must be informed in writing of the reasons for the punishment and name of the second official who was present.

BASIS: Although the parents have a Fourteenth Amendment liberty interest in the control of the rearing and education of their children, that right does not preclude the state's use of reasonable punishment in order to achieve the legitimate goal of order in the schools.

The student's Fourteenth Amendment liberty, interest in freedom from arbitrary infliction of even minimal corporal punishment, mandates that some procedural safeguards be afforded.

DECISION: The Supreme Court's affirmation of the district court's judgment was a summary affirmation without opinion.

AUTHOR NOTE: School board members, school administrators, faculty and staff members need to re-think the meaning of the status in loco parentis. Since a juvenile is entitled to "Due Process" rights the same as an adult, it is essential that there be procedural guarantees that no student be denied his/her rights under the law.

CORPORAL PUNISHMENT

INGRAHAM v. WRIGHT
97 S. Ct. 1401 (1977)

FACTS: Florida statute permits limited corporal punishment but requires prior consultation between the punishing teacher and the school principal and specifies that the punishment not be "degrading or unduly severe." In this case, punishment consisted of paddling two students with a flat wooden paddle. Lower court evidence suggested that the paddling was exceptionally harsh; one student required medical attention and missed eleven days of school, while the other reported loss of the full use of an arm for a week. The students argued that the severe paddling they received constituted cruel and unusual punishment in violation of the Eighth Amendment and deprived them of a liberty interest without a hearing as required by the Fourteenth Amendment.

HOLDING: Protection against excessive corporal punishment of students is provided by the opportunity to file civil or criminal complaints against school personnel. Therefore, neither a hearing is required before corporal punishment is administered nor is such punishment "cruel and unusual."

BASIS: (1) The cruel and unusual punishment clause of the Eighth Amendment does not apply to questions of discipline in public schools but is limited to protecting those convicted of a crime.

(2) The due process clause of the Fourteenth Amendment does not require notice and hearing prior to imposition of corporal punishment. While corporal punishment in the public schools does involve a student's liberty interest, the Court holds that traditional common law remedies were sufficient to afford due process.

The threat of civil suit and possible criminal action against school officials is sufficient to protect the student's due process rights in corporal punishment cases.

STUDENTS' RIGHT OF EXPRESSION

TINKER v. DES MOINES INDEPENDENT SCHOOL DISTRICT
393 U.S. 503 (1969)

FACTS: The action was taken against the school district, its board of directors and certain administrative officials and teachers to recover nominal damages and obtain an injunction against enforcement of a regulation promulgated by principals or schools prohibiting wearing of black armbands by students while on school facilities. The students sought a court order restraining the officials from disciplining them and declaring the suspensions unconstitutional. The United States District Court of Iowa (250 F. Supp. 971) dismissed the complaint and the plaintiffs appealed. The Court of Appeals for the Eighth Circuit (383 F.2d. 988) considered the case and affirmed without opinion when it was equally divided and certiorari was granted. Mr. Justice Fortas, of the United States Supreme Court, held that, in the absence of a demonstration of any facts which might reasonably lead school authorities to foresee substantial disruption of, or material interference with, school activities or any showing that disturbances or disorders on school premises in fact occurred when students wore black armbands on their sleeves to exhibit their disapproval of Vietnam hostilities, regulations prohibiting wearing armbands to school and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion.

HOLDING: The U.S. Supreme Court reversed the lower court's decision and declared that it is unconstitutional to suspend students for the peaceful wearing of armbands or for other symbolic expression of opinion unless it can be shown that material interference with or substantial disruption of, the school's routine did or would occur.

BASIS: The Court made several points:

1. Wearing of armbands to express a viewpoint is a type of symbolic act that is within the free speech clause of the First Amendment.

2. Free speech is entitled to comprehensive protection under the First Amendment.

3. First Amendment rights in the school are available to teachers and students and neither shed their constitutional rights at the schoolhouse gate.

4. State and school authorities have comprehensive authority, consistent with constitutional safeguards, to prescribe and control conduct in the school.

5. In order to justify the prohibition of a particular expression of opinion, one must be able to show that the action was caused by more than the mere desire to avoid discomfort or unpleasantness.

6. School officials do not possess absolute authority over their students.

7. Students, whether in school or out, are "persons" under the Constitution and possess fundamental rights.

8. Mere apprehension of disturbance is not a sufficient basis for such action on the part of school authorities.

STUDENTS' RIGHT AGAINST ILLEGAL SEARCH

PICHA v. WIELGOS
410 F. Supp. 1214 (1976)

FACTS: The principal having received a telephone call which led him to suspect that a 13-year old girl had illegal drugs in her possession at school, was advised by the superintendent to call the police. After arrival of the police, the girl was separately searched by the school nurse and the school psychologist in order to establish whether she possessed illegal drugs.

HOLDING: The student brought civil rights action against school officials alleging a violation of her protection as provided for in the Fourth Amendment of the United States Constitution.

The law was settled, that when Renee Picha was searched, that she had a constitutional right not to be searched by school officials who were in contact with the police unless the extent of the intrusion occasioned by the search was justified in terms of the state interest of maintaining the order, discipline, safety, supervision, and education of students within the school. The court further held that in the circumstances of this case Renee Picha had a constitutional right not to have the police cause a search in the absence of probable cause that she possessed an illegal material at the time of the search.

BASIS: Under Wood v. Strickland, public officials have no immunity from civil rights liability when they disregard settled constitutional rights, regardless of the knowledge or intention those public officials have with regard to those rights. Immunity is also absent if the public officials proximately caused a violation of constitutional rights, settled or unsettled, and did so with malicious intention to cause a constitutional deprivation or other injury to a student.

For the foregoing reasons, the school officials' motion for a directed verdict was denied. The intentions to the jury reflected the holdings of this opinion.

REQUIREMENT FOR RECITATION OF STATE PRAYER

ENGLE v. VITALE
82 S.Ct. 1261 (1962)

FACTS: This case was brought into focus when the State Board of Regents composed a brief prayer which they recommended for the public schools of New York:

> Almighty God, we acknowlege our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country.

Shortly after the practice of reciting the Regents' prayer was adopted by the school district of New Hyde Park, the parents of ten pupils brought action in a state court, insisting that the official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. They further contended that the district's regulation ordering the recitation of this particular prayer was a violation of the First Amendment of the Federal Constitution, which was "made applicable to the State of New York by the Fourteenth Amendment of said Constitution."

Despite the above charges, the recitation of the Regents' prayer as required by the school district was held legal by the Court of Appeals of New York State. However, it was appealed to the United States Supreme Court for final judgment.

HOLDING: The United States Supreme Court rendered its decision that the requirement of the recital of a state composed prayer in the public school classroom was in violation of the Establishment Clause of the First Amendment.

BASIS: The opinion of the Court was written by Justice Black. He stated:

> We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that

> New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious....(370 U.S. at 424).

The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by government officials as a part of a government program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between church and state. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

BIBLE READING CASE

ABINGTON SCHOOL DISTRICT v. SCHEMPP
374 U. S. 203 (1963)

FACTS: The Commonwealth of Pennsylvania By-Law required that:

> At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.

The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment of the Constitution of the United States are, have been, and will continue to be violated unless this statute be declared unconstitutional as a violation of the provisions of the First Amendment.

They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officer and the superintendent of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute.

HOLDING: The issue in the case was whether the "establishment" clause of the First Amendment was violated by a Pennsylvania statute, or a rule of the Board of School Commissioners of Baltimore City adopted pursuant to statutory authority, requiring the reading, without comment, at the opening of each school day of verses from the Bible and the recitation of the Lord's Prayer by the students in unison, these exercises being prescribed as part of the curricular activities of students who are required by law to attend, and held in the school buildings under the supervision and participation of teachers employed in those schools.

BASIS: This decision involved a joinder of two cases, one from Pennsylvania and one from Maryland, testing the meaning of the "establishment" clause

of the First Amendment as applied to the states through the Due Process Clause of the Fourteenth Amendment. The Pennsylvania case dealt with a statute, and the Maryland case with a rule made under statutory authority by the Board of School Commissioners of Baltimore City, which required the reading, without comment, at the beginning of each school day, of verses from the Bible and the recitation by the students, in unison, of the Lord's Prayer. These were prescribed curricular activities applicable to students who are required by law to attend school, and were held in public school buildings under the supervision of and with the participation of the teachers. Upon written request of a parent or guardian a child could be excused from these exercises. Eight Justices agreed that these exercises violated the "establishment" clause of the Constitution, though four of them enlarged upon their views in separate concurring opinions.

FLAG-SALUTE REQUIREMENT

WEST VIRGINIA STATE BOARD OF EDUCATION v. BARNETTE
63 S. Ct. 1178 (1943)

FACTS: The West Virginia State Board of Education adopted a regulation that the salute to the flag become "a regular part of the program of all activities in the public schools," that all teachers and pupils

> shall be required to participate in the salute honoring the nation represented by the flag; provided, however, that refusal to salute the flag be regarded as an act of insubordination, and shall be dealt with accordingly."

Public school students were expelled for their failure to participate in a compulsory flag salute program. As a result, students became liable to prosecution as delinquents and their parents become liable to noncompliance with the compulsory education law. The students challenged the constitutionality of the school board's action of conditioning public school attendance on compliance with mandatory flag salute program.

HOLDING: The United States Supreme Court upheld the District Court's ruling that the State Board of Education rule requiring all students to salute the flag and recite the pledge of allegiance thereto as a condition of school attendance violated the First Amendment to the Federal Constitution which guarantees the exercise of freedom of religion.

BASIS: The First Amendment protects religion, expressions of political opinion, and symbolic speech. The refusal to salute the flag is an expression of opinion within the meaning of this Amendment. The Fourteenth Amendment prohibits state impairment of First Amendment rights absent a present and substantial danger to interests which the state may lawfully protect. The mere passive refusal to salute the flag does not create a danger to the state such that the First Amendment rights to belief and expressions may be impaired.

LIABILITY OF SCHOOL BOARD MEMBERS

WOOD v. STRICKLAND
420 U.S. 308 (1975)

FACTS: The school board suspended three 10th grade girls for approximately three months (to the end of the semester) for "spiking" the punch at a meeting of an extracurricular school organization attended by parents and students. Suit was brought under 42 U.S.C. Section 1983, a federal statute which provides that any person who, under the color of state law, deprives anyone within the jurisdication of the United States, of constitutional rights or of rights secured by federal law, shall be liable to the party injured in a law suit for money damages or for other relief. The students sought money of the school board for alleged violation of federal constitutional rights.

HOLDING: The Supreme Court remanded the case for a ruling on the question of procedural due process violation.

Section 1983 of the U.S. Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In the context of school discipline, a school official's immunity from liability for many damages sought under section 1983 depends on two elements of good faith:

(1) The subjective element requires that to retain his/her immunity, the official acted in the sincere belief that he/she was doing right and without a "malicious intention to cause a deprivation of constitutional rights or other injury to the student."

(2) The objective element causes the school official to lose his/her immunity if

> (s)he knew or reasonably should have known that the action(s) he took... would violate the constitutional rights of the student affected....

The objective part of the good faith requirements is satisfied if the official acts in accordance with the "students" clearly established constitutional rights" and with "settled, indisputable law."

Mr Justice White delivered the opinion of the Supreme Court:

> The official must himself be acting sincerely and with a belief that he is doing right but an act violating a student's constitutional right's can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of student's daily lives than by the presence of actual malice. To be entitled to a special exemption from the categorical remedial language of Section 1983 in a case in which his action violated a student's constitutional rights of school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges. Such a standard neither imposes an unfair burden upon a person assuming a responsible public office requiring a high degree of intelligence and judgment for the proper fulfillment of its duties, nor an unwarranted burden in light of the value which civil rights have in our legal system. Any lesser standard would deny much of the promise of Section 1983, Therefore, in the specific context of school discipline, we hold that school board member is not immune from liability for damages under Section 1983 if he knew or reasonably should have known

> that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury to the student. That is not to say that school board members are 'charged with predicting the future course of constitutional law.'

A compensatory award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith.

BASIS: The Court found that public policy and prior legal decisions require a qualified good faith immunity from damages for officials so that those who act in good faith and within the scope of their duties will not be intimidated in meeting their responsibilities by a fear of being used.

In light of the importance of civil rights, the Court finds the objective element requiring the administrator to act in accord with the settled law and with the constitutional rights of those affected by official action to be a reasonable condition for their immunity from a law suit for damages. On the other hand, if a school official acts out of ignorance or in disregard to settled law, he or she may be sued.

Declining to consider questions of interpretation and application of the relevant school regulation, the Court noted that 42 U.S.C. section 1983 provides for federal court correction of only those improper exercises of discretion which result in violation of specific constitutional guarantees. The Court deferred decision as to whether there had been a denial of procedural due process required by the Fourteenth Amendment, sending the case back to the lower court for initial consideration of that issue.

LIABILITY OF SCHOOL BOARD MEMBERS

MONELL v. NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES
532 F. 2nd 259 2nd Cir. (1976)

FACTS: In this case, female employees of the New York City Department of Social Services and the New York City Board of Education challenged the agencys' former regulations that compelled pregnant employees to take unpaid leave of absence before medical reasons required them to do so. The federal district court dismissed the claim for injunctive and declaratory relief as moot, noting that the maternity leave policy had been changed to provide that no woman need take pregancy leave as long as she could perform her job. The Court also dismissed the claims for back pay as lacking jurisdiction under Title VII of the Civil Rights Act of 1871.

HOLDING: The Second Circuit Court of Appeals subsequently affirmed the lower court ruling and declared that school boards are not "persons" under Section 1983 of the Civil Rights Act of 1871, and therefore cannot be sued for damages under this statute.

The United States Supreme Court reversed the appellate court and ruled that school boards and other units of the government can be liable for monetary, declaratory, and injuctive relief for civil rights violations perpetrated as the agency's formal policy or custom. The Court stated that when official policy impairs protected rights, the government unit as an entity is responsible.

BASIS: The decision was based upon the rationale that the government unit as an entity is responsible when policy impairs protected rights. The governing bodies are not liable, however, for an individual employee's unconstitutional acts if such acts are not related to official policy. Thus, under this ruling, municipalities and other political subdivisions of the state are no longer immune to suits under Section 1983 of the Civil Rights Act of 1871.

ACCOUNTABILITY? NEGLIGENCE? MISREPRESENTATION?
EDUCATIONAL MALPRACTICE?

PETER W. DOE v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT
131 Ca Rptr. 854 (1976)

FACTS: A high school graduate brought action against the city school district for alleged negligence and intentional misrepresentation on the part of the school district which deprived him of basic academic skills.

The action was originally filed in November, 1972, because the boy, with normal intelligence, had been promoted from grade to grade, and eventually graduated after 13 years in grades K-12. But upon graduation it was determined by two private reading specialists that his reading ability was at the fifth grade level. The parents had been worried about the boy's inability to read but when school authorities were contacted they were told that the student was making "satisfactory progress." The action was brought against the school board, the superintendent, the principals, teachers, and others (more than 100 in all). The following claims were made:

(1) The school and personnel were negligent in not providing adquate instruction to develop basic skills.

(2) The defendants had misrepresented to the parents the boy's progress while in school.

(3) The defendants had breached their statutory duty in not keeping the parents properly advised, in providing a diploma from high school when the boy was not meeting prescribed minimum standard, in promoting the boy, and in not designing the curriculum to provide proper instruction for the boy.

(4) The defendants had denied the boy his constitutional right by their omissions.

The complaint contended that, as a result of the acts and omissions of the defendants, the boy had:

a. suffered a loss of earning power because of limited ability to read and write.

b. is unqualified for any employment other than the most demeaning, unskilled, low-paid, manual labor which requires little or no ability to read or write.

c. has suffered mental distress, pain, and suffering.

d. said that injuries and damage will result in his general damage in the sum of $500,000. The complaint also asked for punitive damages in the amount of $500,000 against the defendants.

HOLDING: The Superior Court dismissed the suit and an appeal was made by the plaintiff. Justice Rattigan, Court of Appeals, denied a hearing and held that the complaint failed to state the cause of action for negligence or misrepresentation.

BASIS: In California, liability for negligence is the rule, and immunity the exception. The state cause of action for negligence against a public entity, every factual material to existence of its statutory liability must be pleaded with particularity. A public entity may be held vicariously liable for conduct of its employees only if it is established that employers would be personally liable for conduct complained against them upon some acceptable theory of liability.

AUTHOR'S NOTE: Classroom methodology affords no readily acceptable standards of care. Science of pedagogy is fraught with different and conflicting theories of how a student should be taught, and achievement of literacy in schools is influenced by a host of physical, cultural and environmental factors which affect pupils subjectively beyond control of teachers, teachers and school boards do not have "duty of care" to be certain that students attain basic academic skills. Failure of educational achievement is not "injury" within the meaning of tort law.

ACCOUNTABILITY? NEGLIGENCE? MISREPRESENTATION?
EDUCATIONAL MALPRACTICE?

DONOHUE v. COPIAGUE UNION FREE SCHOOL DISTRICT
LW. 2096 NY App. Div. 2nd (1978)

FACTS: A graduate of a New York high school brought suit against his former school district, alleging that he had been damaged as a result of the educational malpractice of the school district. In addition, the graduate alleged that the school district had breached its statutory duty to educate him. This case is the first educational malpractice case filed in New York. The New York court relied heavily on the California case of Peter Doe v. San Francisco School District, 60 60 (Cal App. 2nd) 814 which held that school districts were under no legal duty to exercise reasonable care in the instruction and supervision of students.

HOLDING: In agreeing with the California court, the New York court held:

> This determination does not mean that educators are not ethically and legally responsible for providing a meaningful public education for the youth of our state. Quite the contrary, all teachers and other officials of our schools bear an important public trust and may be held to answer for the failure to faithfully perform their duties. It does mean, however, that they may not be sued for damages by an individual student for an alleged failure to reach certain educational objectives.
>
> The New York court also noted the difficulty of determining the proximate or legal cause of the student's failure to learn. The student did not allege that his classmates had also failed to learn. The court inferred from this that there must be other causes for the failure.

BASIS: A school system cannot compel a particular student to study or to be interested in education. Here, the plaintiff is not totally illiterate and his academic record indicates satisfactory achievement in several subjects. In addition to innate intelligence, the extent of which a child learns is influenced by a host of social, emotional, economic and other factors which are not subject to control by a system of public education.

STUDENTS' RIGHTS TO BI-LINGUAL EDUCATION

LAU v. NICHOLS
94 S. Ct. 786 (1974)

FACTS: The landmark case in the field of bilingual education is Lau v. Nichols, an action originating in San Francisco, California. This class action was brought by thirteen non-English speaking Chinese students on behalf of the approximately 3,000 Chinese speaking students in the school district, against the San Francisco Unified School District. These students alleged that they were being denied an education because they could not comprehend the language in which they were being taught. It was further claimed that this deprivation of an education was dooming them to become dropouts. They argued for bilingual education on two legal grounds; first, that lack of bilingual education as a violation of their Constitutional right to "equal protection under the law" and second, that it was a violation of the Civil Rights Act of 1964.

HOLDING: The Supreme Court laid to rest the argument that equal access to the facilities provides equal treatment and equal educational opportunity:

> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that before a child can effectively participate in the educational program he must already have acquired these basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful."

In clarifying its decision, the court pointed out that Constitutional requirement was not the main issue of the case, but rather it cited S 601 of the Civil Rights Act of 1964:

> No person in the United States shall, on the grounds of race, color, or national origin be excluded from partipation in, been denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

This section was a mandate by Congress to ensure that federal monies were spent in a non-discriminatory fashion. Furthermore, this section empowered government agencies to issue reasonable guidelines which must be met. Non-compliance with the guidelines may result in the withholding of funds.

Because the school district was the recipient of a large sum of federal funds, it had contractually agreed to all the regulations of the Department of Health, Education and Welfare, agreeing also to take any measure necessary to implement the agreement. The school district, in the court's opinion clearly was not complying with a validly imposed regulation.

A school district receiving federal aid must provide special instruction for non-English speaking students whose education is severely hampered by the language barrier, at least when there are substantial numbers of such students within the district.

BASIS: The failure to provide 1,800 non-English speaking students with special instruction denied them a meaningful opportunity to participate in the public education program and thus violated section 601 of the Civil Rights Act of 1964 and the H.E.W. regulations guidelines implementing the Act. The Court did not decide whether the failure to provide such program is a violation of the equal protection clause of the Fourteenth Amendment.

STUDENTS' RIGHT TO BI-LINGUAL EDUCATION

GUADALUPE v. TEMPE ELEMENTARY DISTRICT
587 F. 2d. 1022 (1978)

FACTS: Appellants were elementary school children of Mexican-American and Yaqui Indian origin or their representative of the community of Guadulupe, Arizona, a semi-rural community of approximately 5,000 people, most of whom are Mexican-American or Indian. Plaintiffs allege that of the approximately 12,280 students in the Tempe Elementary School District No. 3, approximately 18% are Mexican-American or Yaqui Indian, and that in the elementary school in Guadalupe, approximately 554 of 605 students are Mexican-American or Yaqui Indian. Appellants allege four discriminatory acts constituting the violation of their rights:

(1) Failure to provide bi-lingual instruction which takes into account the special educational needs of Mexican-American and Yaqui Indian students;

(2) Failure to hire enough teachers of Mexican-American or Yaqui descent who can adequately teach bi-lingual courses and effectively relate to the educational and cultural needs of the appellants;

(3) Failure to structure a curriculum that even minimally takes into account appellants' particular educational needs;

(4) Failure to structure a curriculum that even minimally reflects the historical contributions of people of appellants' descent to the State of Arizona and the United States.

HOLDING: Appellants assert that their rights to equal educational opportunity have been disregarded in violation of the Equal Protection Clause of the Fourteenth Amendment and that the school district's failure to provide bi-lingual-bi-cultural education also violates rights granted by Section 601 of the Civil Rights Act of 1964, the Equal Education Opportunity Act of 1974 and Title 42 U.S.C. 1983.

BASIS: The United States District Court for the District of Arizona, entered judgment for school district, and plaintiffs appealed. The Court of Appeals, Sneed, Circuit Judge, held that:

(1) elementary school district fulfilled its equal protection duty to children of Mexican-American and Yaqui Indian origin when it adopted measures to cure existing language deficiencies of non-English speaking students; equal protection clause imposed no duty upon district to provide bilingual-bicultural education to non-English speaking students;

(2) school district was not required under Title VI of the Civil Rights Act of 1964 to provide non-English speaking students with a bi-lingual bi-cultural education program staffed with bilingual instructors, and

(3) where school district adopted measures to cure existing language deficiencies of non-English speaking students, Equal Educational Opportunity Act of 1974 did not require district to provide non-English speaking students with bilingual-bicultural education programs staffed with bilingual instructors.

EQUAL EDUCATIONAL OPPORTUNITIES FOR STUDENTS

SERRANO v. PRIEST
96 Cal. Rptr. 601 (1971)

FACTS: The California Supreme Court ended the long struggle over that state's school finance system by ruling it unconstitutional. It ruled thus because the system's foundation rested on each school district's property wealth, a system the court said created unfair variations in expenditures among districts.

The decision closed the book on half a decade of litigation in California state courts. As in many other states in the past several years, the California high court found that a finance system based on property value, with school income derived from property taxes, violated the state constitution. The court found differences of more than $2,000 in per pupil expenditure between school districts, with urban ghetto areas usually on the low end of the scale.

HOLDING: The 4-3 decision was the second time the high court had ruled on the property tax-based system. In 1971 the court reversed a lower court and said the original lawsuit brought against the state, Serrano v. Priest, should go to trial. In the December 1971 opinion, the court reaffirmed its earlier assessment of the problem.

BASIS: So long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.

After the 1971 decision to put the system on trial, the California legislature acted to shore up some of the weaknesses. State lawmakers extended the "foundation approach," which provided a guaranteed minimum amount for each child, insured by the state treasury, and added provisions aimed at equalizing local school fund-raising ability. The high court found, however, that the new system still permitted

too much of a school district's revenue to be based on local property value.

The three dissenting justices pointed out that while the state constitution requires equal protection under the laws for all citizens (the provision relied on by the majority), other sections of the constitution authorize essential elements of the current system. The majority rejected that argument, however, noting that the California constitution does not address itself to what kind of property tax base is appropriate or how to assess the value of property. "Manifestly," the court said, "it does not authorize disparities in school district expenditures based on relative wealth...of a particular school district. Such disparities are the result of legislative action, not constitutional mandate." The legislature has until 1980 to change the system.

EQUAL EDUCATIONAL OPPORTUNITIES FOR STUDENTS

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT v. RODRIQUEZ
411 U.S. 1 (1973)

FACTS: The financing of public elementary and secondary schools in Texas comes from state and local funding. Almost half of the revenues are derived from the state's Minimum Foundation Program which is designed to provide a minimum educational offering in every school in the state. The school districts as a unit provide 20% of the funding for this program. Each district's share is apportioned under a formula designed to reflect its relative tax-paying ability and each district raises these funds by means of a property tax. All districts raise additional monies to support their schools. This revenue source varies with the value of taxable property in the district and results in large disparities in per-pupil spending among districts. In this case, a class representing students who are minority group members or poor and who live in school districts having a low tax base challenged the validity of this funding system. Such a system is widely used in the United States to fund public education.

HOLDING: A funding system based on the local property tax that provides a minimum educational offering to all students and that reasonably serves to further the legitimate, state goal of universal, public education is constitutional.

BASIS: The equal protection clause of the Fourteenth Amendment requires that a strict test of the state law be applied when the law involved operates to the disadvantage of a suspect class of persons or interferes with the exercise of rights and liberties explicitly or implicitly protected by the Constitution. Here, there is no suspect class since students of all incomes and races suffer alike, depending on the tax base of the district in which they attend school. There is no loss of a fundamental right since education, in itself, is not constitutionally protected and since the minimum education guaranteed to every student is sufficient for the exercise of protected political (voting) and First Amendment (expression) rights. Therefore, the financing system must be rationally related merely to a legitimate state purpose to meet the requirements under the Fourteenth Amendment. It is noted that state constitutions may still require stricter standards.

TEACHERS' RIGHT OF EXPRESSION

PICKERING v. BOARD OF EDUCATION
391 U.S. 563 (1968)

FACTS: A few days after a proposal to increase school taxes was defeated by the local electorate, a public school teacher wrote a letter to the editor of a local newspaper criticizing the way in which the superintendent and the local board had handled past proposals to raise new school revenues. After reading the letter the board determined that its publication was detrimental to the efficient operation of the district and that in the best interest of the district the teacher was dismissed. Some of the statements in the teacher's letter were substantially true. Others were false, but seemed to be the product of faulty research rather than knowingly, maliciously or recklessly false. The teachers challenged the constitutionality of the dismissal.

HOLDING: The Illinois state courts upheld the dismissal and rejected the teacher's contention that his remarks and comments in the letter violated his constitutional rights of free speech.

On certiorari the United States Supreme Court reversed the Illinois court decision.

> Absent proof of false statements knowingly or recklessly made by him/her, a teacher's exercise of his/her right to speak on issues of public importance, e.g., on the raising and disbursement of funds for education, may not be the basis of his/her dismissal from public employment. In this case, the dismissal of the teacher is improper.

BASIS: The Supreme Court set forth some interesting statements:

> 1. To retain employment in a school a teacher may not be compelled to relinquish First Amendment rights that they would otherwise enjoy as a citizen.
>
> 2. It is necessary to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern, and

the interests of the state, as an employer, in promoting the efficiency of the public services that it performs through its employees.

3. A public school teacher's substantially correct comments on matters of public concern, although critical of public officials, may not, consistent with the constitutional guarantee of free speech, furnish grounds for dismissal, where such comments do not interfere with the maintaining of discipline by immediate superiors or harmony among co-workers and the teacher's employment relationships with such officials are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning.

4. An accusation by a public school teacher, in a letter to the editor, that too much money is being spent on athletics cannot be reasonably regarded as necessarily detrimental to the district's schools.

5. The teacher has the right to speak out on public issues before the electorate, the same as any other citizen. Such expressions do not necessarily relate to the teacher's competency in the classroom.

TEACHERS' RIGHT TO STRIKE

HORTONVILLE EDUCATIONAL ASSOC. v. HORTONVILLE SCHOOL DISTRICT (WISCONSIN)
96 S. Ct. 2308 (1976)

FACTS: Prolonged negotiations between teachers and a Wisconsin school board failed to produce a contract and the teachers went on strike. The teachers admitted that the strike was illegal according to Wisconsin Statutes.

Under state law the board has the power to negotiate terms of employment with teachers and is the only body vested by statute with the power to employ and dismiss teachers. There is no statute providing for review of board decisions on such matters. However, there is a statutory prohibition against teacher strikes. The teachers refused repeated board urgings that they return to work. The board then held a hearing for the striking teachers and voted to terminate their employment. The teachers contended that they have been denied due process of law required by the Fourteenth Amendment because they were discharged by the school board, a decision-making body that they claimed was not impartial.

HOLDING: The Supreme Court of Wisconsin accepted this argument and ordered that the dispute be submitted to a neutral third party for decision.

On appeal - the U.S. Supreme Court disagreed! While conceding that the board might not have been impartial in its decision to fire striking teachers, it was unwilling to rule that it could not have been - and that the teachers had not proven bias or partiality.

BASIS: Using a balancing approach, the Court defers to the state's interest in maintaining the allocation of responsibility for school matters that is established by statute. Where there is no showing of personal, financial, or anti-union bias, the presumption that the school board will fulfill the Fourteenth Amendment due process requirement of impartiality stands.

FEDERAL MINIMUM SALARIES AND SCHOOL SALARIES

NATIONAL LEAGUE OF CITIES v. USERY, SECRETARY OF LABOR
96 S. Ct. 2465 (1976)

FACTS: The National League of Cities challenged the applicability of the Federal Fair Labor Standards Act to states and their local subdivisions. The original Fair Labor Standards Act of 1938 specifically excluded the states from its coverage. The parts challenged were the minimum wage section and the maximum hour provisions. The case was instituted in 1974 but had its genesis in an Act of Congress in 1966 when the Federal Fair Labor Standards Act was amended to bring within the ambit of the law certain employees of public hospitals, institutions and schools. The Constitutional validity of the 1966 amendment was sustained by the U.S. Supreme Court in Maryland v. Wirtz, 392 U.S. 183 (1968).

In 1974, Congress adopted another amendment which broadened the coverage of the Federal Fair Trades Standard Act to remove further the distinctions made between employees of State and local public agencies, on the one hand, and persons employed in the private sector, on the other hand. The National League of Cities brought suit to enjoin the enforcement of the new act.

HOLDING: A three-member Federal Court ruled against the National League of Cities, basing the decision on Maryland v. Wirtz. The decision was appealed and the U.S. Supreme Court reversed the lower court's decision as was the 1968 ruling of the U.S. Supreme Court in Maryland v. Wirtz. The 1966 and 1974 amendments to the Fair Labor Standards Act were declared unconstitutional. Maryland v. Wirtz was overruled.

BASIS: In the absence of a national emergency, the Tenth Amendment forbids Congress to exercise power in a fashion that impairs the integrity of the states as governmental units or their ability to function in a federal system. The Fair Labor Standards Act as amended in 1966 and 1974 infringes on the states' sovereignty by attempting to prescribe minimum wages and maximum salaries for state employees performing traditional governmental functions.

The Court said:

> One undoubted attribute of state sovereignty is the State's power to determine the wages which shall be paid to those whom they employ in order to carry out their governmental functions, what hours those persons will work, and what compensations will be provided where these employees may be called to work overtime.
>
> ....If Congress may withdraw from the States the authority to make those fundamental employment decisions upon which their systems for performance of these functions must rest, we think there would be little left to the States' "separate and independent existence"...We hold that...they are not within the authority granted by Congress by Article I, Sec. 8, Clause 3.

This court decision has diminished the right of Congress to enact a federal collective bargaining statute covering public school employees.

EMOTIONALLY HANDICAPPED CHILDRENS' RIGHT TO EDUCATION

MILLS, et al, v. BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA
348 F. Supp. 866 (1972)

FACTS: This civil action was brought on behalf of seven children of school age by their parents. They sought to enjoin the Board and school officials from excluding them from the public schools and/or denying them publicly supported education and to compel the Board to provide them with immediate and adequate education and educational facilities in the public schools or alternative placement at public expense. The children had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive. They had been denied admission to the public schools or excluded therefrom after admission, with no provision for alternative educational placement.

The defendants admitted that they were under affirmative duty to provide plaintiffs and their class with publicly supported education suited to each child's needs, including special education and tuition grants, and also, a constitutionally adequate prior hearing and periodic review. However, the defendants told the court that it was impossible because of insufficient funds. The court rejected the Board's answer and held that the District of Columbia's interest in educating the excluded children clearly outweigh its interest in preserving its financial resources.

HOLDING: The court said:

> Defendants shall not suspend a child from the public schools for disciplinary reasons for any period in excess of two days without affording him a hearing...and without providing for his education during the period of any such suspension.

The court gave the defendants 30 days to comply with the orders. Among the orders was one requiring the Board to place notices in newspapers announcing the rights of disabled or handicapped children to an education.

BASIS: The court order required the District to provide education to all children, including the emotionally disturbed as well as other exceptional children. It also held that the Constitution requires a school district to provide a hearing before classifying a student as mentally retarded or otherwise exceptional when such a classification has the effect of transferring the student from a regular public school program into a special program.

MANDATORY MATERNITY LEAVE POLICY

CLEVELAND BOARD OF EDUCATION v. LAFLEUR,
COHEN v. CHESTERFIELD COUNTY SCHOOL BOARD
414 U. S. 632 (1974)

FACTS: Public school teachers, who became pregnant and who were obliged to leave work under mandatory materinity leave rules challenged the constitutionality of the rules. The Cleveland rule required every pregnant teacher to take a maternity leave without pay beginning five months before the expected birth. Application for such leave was required to be made no later than two weeks prior to the date of departure. A teacher on maternity leave was not allowed to return to work until the beginning of the next regular school semester following the date when her child reached three months of age. A doctor's certificate of health was required.

The Chesterfield, Virginia, rule required that a pregnant teacher leave work at least four months prior to the expected birth. Notice was required to be given six months prior to the expected birth. Return to work was guaranteed no later than the first day of the school year following the date when the teacher presented a doctor's certificate and could assure the board that care of the child would cause only minimal interference with her job.

HOLDING: While notice requirements are acceptable, mandatory termination dates established in both rules and the mandatory three-month period of ineligibility for return to work established in the Cleveland rule are unconstitutional. Pregnancy would be treated like any other temporary disability for all job-related purposes.

BASIS: The mandatory termination provisions and the mandatory waiting period before return to work in the Cleveland rule violated the due process clause of the Fourteenth Amendment. Freedom of personal choice in matters of family life is a liberty protected by the Fourteenth Amendment. State rules affecting this liberty must not needlessly, arbitrarily, or capriciously impinge upon it. Since the ability of any particular pregnant

teacher to continue or return to work is an individual matter, the rules creating conclusive presumptions of inability to work are violative of due process. The notice provisions are rationally related to school board needs for planning and do not impair the teachers' rights or offend the constitution.

REVERSE DISCRIMINATION

REGENTS OF UNIVERSITY OF CALIFORNIA v. BAKKE
98 S. Ct. 2733 - (1978)

FACTS: Allan Bakke, a white male with a Master of Science degree in engineering, high grades, some medical background, and a 90th percentile score on medical school admissions tests, was denied admission to the University of California-Davis medical school. The school had set for itself a policy of admission that reserved 16 of 100 seats in each entering class for disadvantaged minority students. Bakke alleged that such a policy violated the equal Protection Clause of the Fourteenth Amendment and Title VI of the 1964 Civil Rights Act (Title VI prohibits racial discrimination in federally assisted program). Bakke contended that such an admission program that allowed the medical school to admit "less academically qualified applicants" was a form of Reverse Discrimination.

HOLDING: The United States Supreme Court ordered the University of California medical school at Davis to admit Allan Bakke as a student. The Court ruled that he had suffered illegal discrimination because he was white. The Court indicated that the medical school had gone too far in considering race when it refused to admit Bakke.

In the Courts main opinion, Justice Lewis F. Powell Jr. held that strict racial quotas or goals are illegal, but other types of Affirmative Action programs are permissable. Justice Powell indicated that the assignment of a fixed number (16 in this case for minorities) is not necessarily a means of achieving educational diversity. In fact it would hinder rather than attain genuine diversity.

The Justices of the Supreme Court limited their six separate opinions to admission policies in education and did not address themselves to other Affirmative Action programs. While ruling out quotas and goals, Justice Powell indicated that other types of Affirmative Action programs may be permitted.

BASIS: The full implications of the decision are unclear, and it leaves uncertain what the ruling may portend for other federal programs. It should be noted that there was no majority opinion in the case. Four of the Justices said in one opinion that Title VI of the 1964 Civil Rights Act forbids discrimination because of race, color, or national origin, in any program that receives federal money, and that Bakke had been illegally excluded because he was white. Four other Justices, in another opinion, said that Davis program, which set aside 16 or the 100 places in first-year medical school classes for disadvantaged minorities, was legal. They maintained that Congress had intended Title VI to reflect the Constitutions Fourteenth Amendment guarantee of equal protection of the laws. The Justices said that the amendment permitted race to be taken into account to remedy the affects of past discrimination.

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GLOSSARY OF LEGAL TERMS

CERTIORARI: "To be made certain of:" the name of a writ of review for a case falling in the discretionary area of the Supreme Court's appellate jurisdiction, requiring an affirmative vote of four Justices.

CLASS ACTION: An action brought on behalf of other persons similarly situated.

CONCURRENCE: An opinion separate from that of the majority filed by one or more Justices who agree(s) with the general result of the majority decision, but who choose(s) to emphasize or differentiate the reasoning or grounds for the decision.

COMMON LAW: As distinguished from legislatively created law, the common law consists of those traditionally held legal principles, usually enunciated in court decisions, which derive their force and effect from the historic acceptance and recognition given those principles by a society and its judiciary. Ordinarily, the term refers to the unwritten law of England.

COMPLAINT: A plaintiff's first formal pleading in a civil suit. This document, filed with the court and delivered to the defendant is intended to inform the defendant of the factual grounds upon which the plaintiff is relying in his lawsuit.

CONTRACT: A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation.

CONTRIBUTORY NEGLIGENCE: Negligence of the plaintiff which, combined with the negligence of the defendant, was the proximate cause of the injury complained of.

DAMAGES: A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights through the unlawful act or omission or negligence of another.

DE FACTO:	In reality, in fact. This term is used to describe an entity or event which is not constituted in a regular and legal fashion but which nonetheless must be accepted for all practical purposes. The phrase is used to characterize the illegal but real existence of a public official, a state of affairs, a past action, a government, etc. Distinguished from de jure.
DISSENT:	An opinion which disagrees with that of the majority and is handed down by one or more members of the Court.
DE JURE:	By a lawful title, of right. The contrary of de facto.
DEFAMATION:	Scandalous words written or spoken concerning another, tending to the injury of his reputation, for which an action on the case for damages would lie.
DEFENDANT:	The party against whom the lawsuit is brought.
DISCRETIONARY POWER:	Involves the exercise of judgment in reaching a decision. Deciding whether to do something.
DISSENTING OPINION:	An opinion disagreeing with that of the majority, handed down by one or more members of the court.
DUE PROCESS:	Law in the regular course of administration through courts of justice, according to those rules and forms which have been established for the protection of private rights.
EMINENT DOMAIN:	The power to take private property for public use.
INJUNCTION:	A judicial order requiring the person or persons to whom it is addressed to do or not to do a particular act or acts. This remedy is ordinarily granted only when the remedy at law for the offense committed is inadequate.
IN LOCO PARENTIS:	"In place of parents:" charged with a parent's rights, duties and responsibility. In the case of a teacher, this is a condition applying only when the student is under the reasonable control and supervision of the school.

LIABILITY:	The word is a broad legal term and has been referred to as the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely.
LIBEL:	Defamation by printed or written communication.
MANDAMUS:	A writ, issued from a superior court to an inferior court, corporation, or officer, which commands the performance of a legally required public act.
NEGLIGENCE:	Want of care.
ORDINANCE:	The term applied to a municipal corporations legislative enactments. An ordinance should be distinguished from a statute.
PER SE:	By itself, alone.
PLAINTIFF:	One who initiates a lawsuit; the party bringing suit.
PLEANARY:	Full, conclusive.
POLICE POWER:	Inherent or pleanary legislative power to enact laws for the comfort, health and prosperity of the state. The right to modify for the common good. In short, the right of the sovereign to govern.
PRIMA FACIE:	At first view; on the first aspect. Prima facie evidence, presumptions, etc. are such as will prevail, if not rebutted, or disproved.
QUASI:	As if; almost.
QUASI MUNICIPAL CORPORATION:	A political or civil subdivision of the state, created by law, to assist the state in administering the state's affairs--an involuntary corporation. Example: a school district.
QUO WARRANTO:	By what authority? A writ, or proceeding, by which the government, inquires into the right of a person, or corporation to hold an office, or exercise a franchise, which was never lawfully held, or which has been forfeited by neglect or abuse.
SLANDER:	Defamation of spoken word.

STARE DECISIS: Adherence to precedent: When the court has made a declaration of legal principle it is the law until changed by a competent authority.

STATUTE: Law enacted by the legislative power of a county or state.

TORT: Legal injury or wrong committed upon the person or property of another independent of contract.

ULTRA VIRES: An ultra vires contract is one beyond the powers of the corporation to make. In other words, it is one the corporation had no authority to make.

VOID: Null, ineffectual; negatory; having no legal force or binding effect; unable, in law to support the purpose for which it was intended.

VOIDABLE: That may be avoided, or declared void, not absolutely void, or void in itself.